

§710.6

10 CFR Ch. III (1–1–09 Edition)

matter or is eligible for access to, or control over, special nuclear material.

Classified Matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Hearing Officer means a DOE attorney or senior management official appointed by the Director, Office of Hearings and Appeals, pursuant to §710.25. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Local Director of Security means the individual with primary responsibility for safeguards and security at the Chicago, Idaho, Oak Ridge, Richland, and Savannah River Operations Offices and the Pittsburgh and Schenectady Naval Reactors Offices; the Manager, National Nuclear Security Administration (NNSA) Service Center; for Washington, DC area cases, the Director, Office of Security Operations; and any person designated in writing to serve in one of the aforementioned positions in an acting capacity.

Manager means the Manager of a DOE Operations Office (Albuquerque, Chicago, Idaho, Nevada, Oak Ridge, Oakland, Richland, or Savannah River), the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Personnel Security.

National Security Information means any information that has been determined, pursuant to Executive Order 12958 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been

determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Throughout this subpart the use of the male gender shall include the female gender and vice versa.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47063, Sept. 11, 2001; 71 FR 68730, Nov. 28, 2006]

CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

§710.6 Cooperation by the individual.

(a)(1) It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any access authorization then in effect may be terminated, or, for applicants, further processing may be suspended.

(2) It is the responsibility of an individual subject to §709.3(d) to consent to and take an event-specific polygraph examination. A refusal to consent to or take such an examination may prevent DOE from reaching an affirmative finding required for continuing access authorization. In this event, DOE may suspend or terminate any access authorization.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied

Department of Energy

§ 710.8

in his case, he may file a written appeal of the action with the Director, Office of Personnel Security, DOE Headquarters, within 30 calendar days of the date he was notified of the action.

(c) Upon receipt of the written appeal, the Director, Office of Personnel Security, shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, as to whether the action to terminate or suspend processing of access authorization was appropriate. If the Director determines that the action was inappropriate, he shall direct that the individual continue to be processed for access authorization, or that access authorization for the individual be reinstated.

[59 FR 35185, July 8, 1994, as amended at 71 FR 57397, Sept. 29, 2006; 71 FR 68730, Nov. 28, 2006]

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security. Absent any derogatory information, a favorable determination usually will be made as to access authorization eligibility.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. DOE is not limited to these criteria or precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated cat-

egories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) In resolving a question concerning an individual's eligibility for access authorization, all DOE officials involved in the decision-making process shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47063, Sept. 11, 2001]

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has knowingly taken action which evidences a sympathetic association with the intent of furthering the aims of, or adhering to, and actively participating in, any foreign or domestic organization, association, movement, group, or